DATO' M. MUTHUPALANIAPPAN

v.

TAMIL MALAR SDN. BHD. & ANOR.

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[CIVIL SUIT 22-220-1988]
15 FEBRUARY 1989

CIVIL PROCEDURE: *Injunction - Ex parte order set aside - Defamation suit - Publication in newspaper - No averment in affidavit that statements were untrue.*

This was an application by the defendants/applicants to set aside an interlocutory injunction which was made *ex parte.* The respondent/plaintiff had made a claim for damages for libel by the applicants. The respondent contended that the applicants had published defamatory articles in the first defendant's newspaper. The respondent was a State Assemblyman. The applicants had published articles which reported that the respondent had closed the service centre which he had set up in his constituency to serve his constituents. The applicant's grounds for setting aside the injunction was that the respondent had not proved that the statements complained of were untrue.

Held:
The injunction was set aside as the respondent did not state in the affidavit in support of his application for an injunction that the statements complained of were untrue. Damages were awarded to the applicants.

[Application allowed. Costs to be taxed.]

Case referred to:
Quartz Hill Consolidated Gold Mining Company v. Beall [1882] Vol. XX Ch D 504

[Editorial Note: The plaintiff herein has appealed against the above judgment *vide* Mahkamah Agung Rayuan Sivil No. 553 of 1988.]

For the applicants/defendant - N. Ramachandran; M/s. N. Ramachandran & Co.
For the respondent/plaintiff - Pretam Singh; M/s. Muthu & Partners

JUDGMENT

Mustapha Hussain J:

Defendants' application (encl. 8) to dissolve the interlocutory injunction dated 21 October 1988.

The plaintiff is an elected state assemblyman for Rantau constituency and also a State Executive Councillor. He is also the chairman of the Malaysian Indian Congress for the State of Negeri Sembilan. One of the services provided by the plaintiff to his constituency as an elected representative is a service centre in Rantau where the constituents can go and seek help from the plaintiff.

The last defendant is the publisher of a Tamil language newspaper called "Thinamani" and the 2nd defendant is the editor of the newspaper which runs quite a wide circulation including Sunday editions.

On 2 October 1988, the defendants published in their newspaper "Thinamani" that the service centre in Rantau operated by the plaintiff to serve the constituency of Rantau had been closed down for good and that the people of the constituency of Rantau were disgruntled about the closure. The article also said that the plaintiff did not go to the service centre for about three months and further stated that the plaintiff although he did not go to the service centre, he at least should have paid the bills of electricity charges for the premises and the electricity supply had been disconnected. The article said that the people of the constituency were left deserted.

Of course this article in the Tamil daily "Thinamani" is very damaging for the plaintiff considering his high political standing. On the same day, 2 October 1988, the plaintiff made a press statement denying that the service centre in Rantau had been closed or the service to the people was stopped and the plaintiff threw open a challenge to any one to prove otherwise.

Following this, on 8 October 1988, the defendants' newspaper "Thinamani" reported that the Rantau service centre was only re-opened after the first publication in "Thinamani" on 2 October 1988 of the closure of the centre. The article of 8 October 1988 also pointed out that the plaintiff in his press statement had hidden the fact of disconnection of electricity supply to the service center twice in the past and the service centre started to open in the afternoons after the news of its closure were highlighted in "Thinamani" earlier. The same article also carried an item of news about the switching of the plaintiff from Si-Rusa constituency to Rantau constituency at the last general elections.

Then followed a letter dated 10 October 1988 from the plaintiff's solicitors addressed to the 1st defendant and stating that the publications on 2, 5 & 9 October 1988 of the aforesaid articles were libellous and not true and demanded withdrawal of such articles and an open apology in the defendants' newspaper "Thinamani".

In response to this, the defendants did publish on 12 October 1988 an article stating that they regretted if the articles carried by their newspaper about the plaintiff on the said dates had hurt the plaintiff's feelings and that the articles or news items they published were based on information they had received. Further, the defendants said that in publishing the said articles and news items, they meant no malice or illwill towards the plaintiff.

On the same day, 12 October 1988, plaintiff's solicitors wrote another letter to the 1st defendant stating that the plaintiff was not satisfied with explanation published on 12 October 1988 and demanded a suitable open apology and withdrawal of the articles in terms to be approved by the plaintiff, within 48 hours, failing which the plaintiff will resort to Court action.

The above are the events which preceded the plaintiff's filing on 20 October 1988 of a writ of summons with statement of claim against the two defendants. The plaintiff also filed an *ex-parte* summons-in-chambers at the same time together with the supporting affidavit seeking an injunction. The *ex-parte* injunction was granted by the Court on 21 October 1988, on a certificate of urgency.

The defendants by notice of motion dated 1 November 1988 on a certificate of urgency have applied to dissolve the *ex-parte* injunction.

At the hearing of this notice of motion on 4 November 1988, Counsel for defendants very ably cited many cases in support of his contention to set aside the injunction. The most relevant case is that of *Quartz Hill Consolidated Gold Mining Company v. Beall* [1882] Vol. XX Ch. Div. p. 504, decided more than 100 years ago on 22 February 1882. This case

which has not been challenged to be wrong, clearly laid down the law that the injunction in general would not be given unless the plaintiff/applicant satisfies the Court that the statements complained of are untrue. And the statements complained of and averments that they are not true should have been stated in the affidavit supporting the application for the injunction. This was not done when the plaintiff applied for the injunction. This is fatal. The injunction cannot stand. It is only after receiving the application to lift the injunction with the supporting affidavit of the defendants that the plaintiff replied annexing exhibits claiming that the statements are not true. This is too late in the day. In fact, the plaintiff's affidavit in reply more or less confirmed the criticisms published by the defendants, who as a free press are bound to report on the true state of affairs of the constituency and the performance of the elected representative for the information of the people who elected the plaintiff and if the reports are not true then the defendants are open for action, for libel and can be liable for damages.

It is on this point of law alone that I order the injunction to be lifted as from today, with costs of this application to the defendants in any event to be taxed and paid. Question of damages to be decided at the trial proper of the suit.

Indeed, by a strange twist of irony, the story highlighted by the defendants in their newspaper whether true or not, has brought publicity to the plaintiff's constituency that the plaintiff has been operating a service centre to serve the needs and to look into the problems of the people of this constituency who elected him, something which is commendable of an elected representative. In fact the plaintiff should be thankful that there is a press like the defendants' to check and improve plaintiff's services to the people of his constituency.

The defendant's newspaper "Thinamani" like all the newspapers, is a free press although there are certain laws restricting their publication.

Reportage on the workings, activities, conduct and services of the elected representatives of legislatures are not restricted by any law except that the reports must not be untrue.

The people who elected their representatives have a right to know what their elected representatives are doing and to improve the constituencies and to meet the needs of the electorate. And if in the process some unpleasant criticisms are made, made *bona fide*, and in the interest of the constituency and the people of the constituency, whose welfare and needs the elected representative is duty bound to look after, then the representative cannot complain. In fact the higher one goes, especially in the political echelon, one is more open to criticisms and public attention is focussed towards him, even to the extent of losing one's privacy. This is the price one has to pay for high elected office like that of the plaintiff.

The plaintiff is not without remedy. If at the trial he can prove that the statement published by the defendants was not true, he is entitled to damages. And if the defendants were to publish anything false against the plaintiff, the plaintiff can still come to the Court for relief.

Also found at [1989] 1 CLJ 786